

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:	NUMBER
PAUL WILLIAM ORSO	94-11491
DEBTOR	CHAPTER 7
 VALERIE CANFIELD	 ADV. NUMBER
PLAINTIFF	95-1026
 V.	
PAUL WILLIAM ORSO JANICE ORSO	
DEFENDANTS	

MEMORANDUM OPINION

Plaintiff Valerie Canfield¹ filed this adversary proceeding in 1995 seeking to have certain obligations owed to her by the debtor, Paul Orso, her former husband, declared non-dischargeable. The Court closed the case administratively in December 1997, but reopened it on plaintiff's motion in May 2002. At the January 13, 2003 trial, on plaintiff's motion the Court dismissed count one of the complaint, which sought relief under 11 U.S.C. §523(a)(15). Accordingly, the only issue tried was

¹ Ms. Canfield remarried after filing the complaint and now is known by her married name, Valerie Canfield Danyluk. For convenience this opinion will refer to her by the name under which she filed the complaint.

whether Orso's obligation to Canfield was excepted from discharge under Bankruptcy Code section 523(a)(5). Considering the evidence and applicable law, the Court concludes that Orso's obligation to Canfield is non-dischargeable under 11 U.S.C. §523(a)(5).

Facts²

Canfield and Orso married in 1985. The next year, Orso was disabled in an automobile accident. At the time, Orso was on active duty with the United States Navy. In September 1989, Orso and Canfield settled their claims arising out of the accident. Orso received \$54,148.87 in cash, plus two annuities that guaranty payments totaling \$2,030 per month for thirty years.³ Canfield received a single payment of \$54,148.87.⁴

The couple were legally separated May 21, 1990 and divorced January 18, 1991. At the time of the legal separation, Orso's income included the settlement annuity payments, a Navy disability payment and a small social security payment. Canfield had no income because before separating from Orso, she had quit her job in order to attend college. She had put aside approximately \$30,000 from her portion of the settlement payments to help pay for her education.

On the date the legal separation was granted, Canfield and Orso entered into an agreement prepared by Orso's lawyer and styled "Settlement of Community." Canfield was not represented by a

² Many of the facts surrounding this dispute, and the related bankruptcy proceeding, are set out in an earlier opinion of this Court reported as *In re Orso*, 219 B.R. 402 (Bankr. M.D. La. 1998), *aff'd on rehearing*, 283 F.3d 685 (5th Cir. 2002).

³ Additional lump sum amounts of \$5,000, \$15,000, \$20,000 and \$25,000 were to be paid on the fifth, tenth, fifteenth and twentieth anniversaries of the settlement.

⁴ After settlement of the United States government's medical claims, Orso and Canfield also received \$8,351.13 and \$11,204.24, respectively.

lawyer in connection with the agreement. The document contained many undertakings, but the one at issue in this adversary proceeding is Orso's agreement to pay Canfield. The specific language was:

As further consideration herein, Paul William Orso agrees to pay Valerie Canfield Orso the sum of One Thousand Two Fifty (\$1,250) Dollars per month through the month of May, 1994 if Valerie Canfield Orso remains enrolled as a student (either part-time or full-time) at L.S.U. until that date. If Valerie Canfield Orso should drop out of L.S.U., then the monthly amount will decrease to the sum of One Thousand (\$1,000) Dollars per month with all such payments still terminating at the end of May, 1994. Should Valerie Canfield Orso drop out of L.S.U. and then re-enroll at L.S.U., the monthly payments will again increase to the sum of One Thousand Two Hundred Fifty (\$1,250) Dollars per month for all such months that she is enrolled as a student at L.S.U., until May of 1994, when all payments will terminate.

The origin of this provision is essentially undisputed. Canfield testified that she needed financial support because she wanted to complete college without working. She also stated that Orso seemed to want a quick resolution to the divorce. Canfield proposed that Orso pay her through May 1994, by which time she hoped to have graduated from Louisiana State University.⁵ Orso testified that he had agreed to whatever Canfield wanted in the agreement. In any event, Orso offered no evidence to contradict Canfield's claims that the payments under this agreement were intended as support.⁶

Orso made the \$1,250 monthly payments only through September 1990, when he stopped them on the advice of his mother, Janice Orso. Mrs. Orso testified that she only learned of the property settlement agreement after it was signed, when Orso came to her for help with his checkbook. She acknowledged asking her son why he was making payments to Canfield, and also admitted telling him to stop them.

⁵ Canfield was awarded a bachelor's degree by Louisiana State University in August 1993.

⁶ An August 1990 amendment to the agreement made changes that are irrelevant to this case.

After Orso stopped the payments, Canfield sued him in state court in December 1990 to enforce the contract. Orso's answer to the lawsuit admitted that he had stopped the payments in September 1990, but included a reconventional demand seeking to invalidate the agreement on several grounds, including his lack of contractual capacity.

Orso was placed under limited interdiction on the petition of his mother in August 1992. After Mrs. Orso became Orso's curatrix, she substituted herself for her son as defendant and plaintiff-in-reconvention in the state court litigation. After trial on the merits, the state court awarded Canfield judgment for amounts owed under the agreement, specifically finding that Mrs. Orso "failed to prove . . . lack of consideration or capacity on behalf of Paul William Orso."⁷ Mrs. Orso's appeal of the judgment was stayed by Orso's December 19, 1994 chapter 7 filing.⁸

Discussion

Despite the unfortunate accident that thwarted Orso's life plans, the state court concluded that he had the capacity to contract with Canfield. This Court cannot revisit that conclusion. 28 U.S.C. §1738. Section 1738 compels the Court to give the state court judgment the same preclusive effect that it would be given by a Louisiana state court.⁹ Louisiana Revised Statute 13:4231(3) states that a

⁷ *Orso v. Orso*, Suit No. 364,575 (19th Judicial District Court for East Baton Rouge Parish), July 7, 1994 Judgment at ¶4.

⁸ The Court granted Canfield's motion for relief from the automatic stay on August 5, 2002 to allow the appeal to go forward. The appeal was not resolved as of the date of the trial in this adversary proceeding.

⁹ Under 28 U.S.C. §1738, the judicial proceedings of any state "shall have the same full faith and credit in every court within the United States . . . as they have by law . . . in the courts of such State."

“judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.” In Canfield’s action to enforce the agreement, the parties litigated and the state court decided Orso’s capacity to contract. Consequently, Orso’s agreement with Canfield is valid, so this Court need only determine whether the obligation in favor of Canfield is one for support within the meaning of 11 U.S.C. §523(a)(5).

Section 523(a)(5) of the Bankruptcy Code excepts from discharge debts to “a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child.” As the former spouse objecting to dischargeability of the obligation, Canfield bears the burden of proving that Orso’s obligation to her was actually in the nature of alimony, maintenance or support. *In re Benich*, 811 F.2d 943 (5th Cir. 1987); *In re Fraser*, 196 B.R. 371 (E.D. Tex. 1996). Moreover, although the agreement is entitled “Settlement of Community,” the label on the agreement alone is not dispositive of the character of the obligation. *Benich*, 811 F.2d at 945; *Matter of Biggs*, 907 F.2d 503 (5th Cir. 1990). *See also In re Shaver*, 736 F.2d 1314, 1316 (9th Cir. 1984) (where so-called “property settlement” agreement fails to provide explicitly for spousal support, court may presume that it is intended for support when the facts indicate that the recipient spouse needs support.)

The Court must examine the circumstances that existed at the time the obligation arose to determine the parties’ intent regarding the actual purpose of the obligation. *In re Calhoun*, 715 F.2d 1103 (6th Cir. 1983); *In re Pino*, 268 B.R. 483 (Bankr. W.D. Tex. 2001). The financial needs of the parties at the time of trial are irrelevant. *In re Draper*, 790 F.2d 52 (8th Cir. 1986); *In re Martinez*, 230 B.R. 314 (Bankr. W.D. Tex. 1999).

Numerous published opinions contain a laundry list of non-exclusive factors that can be used to distinguish support obligations from property settlements for purposes of §523(a)(5). *See, e.g., In re Coffman*, 52 B.R. 667, 674-75 (Bankr. D. Md. 1985) (surveying the applicable case law and identifying eighteen factors). The Fifth Circuit has counseled bankruptcy courts to consider several factors to determine whether a particular undertaking constitutes alimony, maintenance or support, including “the parties’ disparity in earning capacity, the parties’ relative business opportunities, the parties’ physical condition, the parties’ educational background, the parties’ probable future financial needs and the benefits each party would have received had the marriage continued.” *Matter of Dennis*, 25 F.3d 274, 279 (5th Cir. 1994), citing *In re Joseph*, 16 F.3d 86, 88 (5th Cir. 1994). Regardless of the factors considered, the ultimate question remains the parties’ intention. *Benich*, 811 F.2d at 945.

The evidence supports the conclusion that Orso’s obligation to Canfield was intended to be in the nature of support. Canfield testified that she agreed to expedite the divorce proceedings on condition that Orso provide financial support to help her complete college. The agreement itself provides that Canfield’s college enrollment status governed the amount of the monthly payments, and Orso’s obligation to make payments was to end on the date of her anticipated graduation from Louisiana State University. Moreover, Orso offered no evidence to support the conclusion that the payments were not intended to support Canfield. Nor did Orso offer any evidence to suggest that the payments under the agreement were meant to equalize a property distribution. *Compare In re Wright*, 184 B.R. 318 (Bankr. N.D. Ill. 1995) (because certain amounts awarded to the former wife in a dissolution judgment were intended to equalize distribution of marital assets, the payments therefore were in the nature of a property settlement, rather than an agreement for support.)

Several of the factors enumerated in *Dennis* also suggest that the parties' agreement was a support obligation. At the time of the agreement, Canfield was a high school graduate with no steady income, and no immediate prospects for employment. Although Orso also had only a high school diploma and was unemployed, he was receiving disability pay, social security and the annuity payments. Canfield had some resources as a result of the claim settlement, but was forced to spend those resources and incur student loan debt to support herself and complete college after Orso on the advice of his mother chose to ignore the agreement.

Because the preponderance of the evidence supports a finding that Canfield was in need of support at the time of the separation and the parties' intention was to provide that support through the payments under the agreement, the Court concludes that the agreement was one intended to provide support.

Conclusion

The payments Orso agreed to make to Canfield under the "Settlement of Community" agreement are in the nature of support or maintenance. Accordingly, the Court will enter a judgment declaring the obligation due under the agreement non-dischargeable pursuant to 11 U.S.C. §523(a)(5).

Baton Rouge, Louisiana, April 25, 2003.

s/ Douglas D. Dodd
DOUGLAS D. DODD
UNITED STATES BANKRUPTCY JUDGE